

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 4574 of 1998**

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NARSINHBHAI ISHWARBHAI PATEL & 1 - Appellant(s)
Versus
RUPSANGJI LAXMANJI THAKOR & 1 - Defendant(s)

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Appearance :

MR MEHUL SHARAD SHAH for Appellant(s) : 1 - 2.
MR PRAKASH K JANI for Defendant(s) : 1,
MR JAL SOLI UNWALA for Defendant(s) : 1,
MR RAJNI H MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the award dated 20.12.97 passed by the Motor Accident Claims Tribunal, Mehsana in Claim Petition No. 1039 of 1989 whereby the Tribunal has awarded compensation to the tune of Rs. 19,626/- payable to the original claimants by the original opponent nos. 1 & 2.

2. The original claimant had filed claim petition claiming compensation to the tune of Rs. 60,000/- in respect of an accident which occurred while on 07.04.89

the nearest relative of the original claimants who had expired was being taken in a tractor bearing no. GBZ 9488 with its trolley bearing no. GQD 2832 for cremation at Sidhpur. When the tractor came near village Kahoda the tractor turtled due to the rash and negligent driving of the original opponent no.1 thereby causing injuries to the the original claimants. The claim petition came to be filed under the said circumstances and the Tribunal passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has erred in dismissing the claim petition against the insurance company and allowing the claim petition against the driver and owner of the vehicle only. He has further contended that without the knowledge of the owner the driver himself took away the tractor and therefore it cannot be said that the owner has committed breach of any condition of the policy.

4. Learned counsel appearing for the insurance company has submitted that the award passed by the Tribunal is just and proper and therefore no interference is required. He has placed reliance on various decisions of this Court and the Apex Court in order to substantiate his case. The decisions relied by him are in the cases

of Vanaji Dhulaji v Shivabhai Kashibhai reported in AIR 1980 Gujarat 154, Mallawwa and others v Oriental Insurance Co. Ltd. and others reported in 1999 ACJ 1, Oriental Insurance Co. Ltd v Devireddy Konda Reddy reported in 2003 SC 1009[2003(2) SCC 339] and New India Assurance Co. Ltd v Asharani reported in 2003(2) SCC 223.

5. Heard learned counsel for the parties. I have gone through the averments made in the appeal and documents placed on record including the award of the Tribunal. From the perusal of the award, it is clear that the tractor bearing no. GBZ 9488 was a goods vehicle and under the terms and conditions of the policy it was to be used only under a private carrier permit and that the policy does not cover the risk for the use of the auto for the conveyance of passenger for hire or reward. Moreover, more than six passengers were travelling in the vehicle which was not meant for carrying of passengers but was a tractor which could be used only for agricultural purpose.

5.1 A perusal of the decisions relied on by the learned counsel for the insurance company is relevant at this stage and the same is considered one by one. In the case of Vanaji Dhulaji this Court has held that vehicle not

covered by permit to ply for hire or reward on date of contract of insurance used for that purpose in breach of specific condition in policy which excluded such use and the insurance company is not liable to satisfy award against insured in respect of third party risks.

5.2 In the case of Mallawa and others(supra) the Apex Court has held that the insurance company is not liable for death or injuries sustained by persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously.

5.3 In the case of Oriental Insurance Co. Ltd (supra) the Apex Court has taken the view that the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

5.4 In the case of New India Assurance Co. Ltd (supra), keeping in view the provisions of the 1988 Act, the Apex Court has taken the same view as in Oriental Insurance Co. Ltd (supra) that as the provisions do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods

vehicle, the insurers would not be liable therefor.

6. As a result of hearing and perusal of records and in view of the decisions of this Court and the Apex Court, I am of the opinion that the fact that the vehicle in question was a goods vehicle cannot be disputed and therefore the insurance company cannot be held liable to undertake third party risk in a case where the vehicle is used for a purpose other than the one for which the policy is covered. In that view of the matter, the award of the Tribunal is just and proper and does not call for any interference by this Court.

7. In the premises aforesaid, the appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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